86-101

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

DAVID HARRIS, an individual,

and

YES TO STOP CALLAWAY COMMITTEE,
an unincorporated association,

Petitioners,

v.

MISSOURI COURT OF APPEALS,
WESTERN DISTRICT,
CHIEF JUDGE WILLIAM E. TURNAGE, et. al.,

and

SUPREME COURT OF MISSOURI,
CHIEF JUSTICE ALBERT L. RENDLIN, et. al.,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

Pro se
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QUESTION PRESENTED FOR REVIEW

WHETHER A STATE COURT, AND THE JUDGES OF A STATE COURT, CAN BE SUED FOR VIOLATING THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT?

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In the Supreme Court of the United States
October Term, 1985
No.

David Harris, et al., Petitioners

v.

Mo. Court of Appeals, et al., Respondents.

Petitioners request a writ of certiorari to review the judgement of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 787 F.2d. 427. That opinion and a later revision are contained in the Appendix.

The opinion of the District Court for the Western District of Missouri, Central Division, is not reported. That case number is 85-4009-CV-C-5, and the opinion is contained in the Appendix.

STATEMENT OF JURISDICTION

The judgement of the District Court was filed April 8, 1985. The judgement of the Court of Appeals was filed March 28, 1986 and revised May 8, 1986, at which time a rehearing was denied.

28 U.S.C. §1254(1) is the statutory provision which confers on this Court jurisdiction to review the judgement in question by writ of certiorari.

PROVISIONS INVOLVED

Amendment 14, Section 1, of the Constitution of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

Amendment 14, Section 5, of the Constitution of the United States:

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article".

United States Code, Title 42, Section 1983, Civil action for deprivation of rights:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

STATEMENT OF THE CASE

On January 4, 1985, petitioners David Harris, an individual, and YES to Stop Callaway Committee, an unincorporated association, filed a pro se complaint in the United States District Court for the Western District of Missouri, Central Division, against respondents Missouri Court of Appeals, Western District, Chief Judge William E. Turnage, et al., and Supreme Court of Missouri, Chief Justice Albert L. Rendlen, et al. The complaint asserted that respondents intentionally discriminated against petitioners with actions that violated petitioners' constitutional right to the equal protection of the laws. District Court jurisdiction was invoked under 28 U.S.C. §1331, generally, and under §1343 (a)(3) and (4), specifically, based on a cause of action under 42 U.S.C. §1983 and under the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Details of petitioners' lawsuit are set out clearly in their complaint, the text of which,

without the attached exhibits, is Addendum A. Although the facts in the complaint are crucial to petitioners' initial suit, these facts are not material to the consideration of the questions presented in this petition and will not be repeated here.

Respondents filed a motion to dismiss the complaint and petitioners replied to that motion. The district court, Judge Scott O. Wright, sustained the motion to dismiss, declaring that respondents cannot be sued. In an order dated April 8, 1985, the court gave three reasons for this decision: 1) State courts are not "persons" under §1983 and therefore are not subject to suit; 2) Judges of the courts as individuals are protected from suit by judicial immunity; and 3) Some of the relief requested could and would not be granted.

Petitioners filed a timely pro se appeal of the dismissal with the U.S. Court of Appeals for the Eighth Circuit, invoking their jurisdiction under 28 U.S.C. §1291. The last brief was

submitted August 1, 1985. The Eighth Circuit, Judges Bright, Arnold and Ross, affirmed dismissal. In a decision filed March 28, 1986, the court agreed that respondents can't be sued ("appellants fail to name a party liable to suit", p.3). Three reasons were given for respondents' immunity: 1) "Individual judges are immune from civil suit when acting within their judicial capacity, even in $1983 Civil Rights actions"; 2) "(C)ourts as entities are not vulnerable to $1983 suits, because they are protected by state immunity under the eleventh amendment"; and 3) "A court is not a 'person' within the meaning of the Civil Rights Act" (p.3). In addition, the decision said that even if respondents could be sued ("if a nonimmune party were involved") "(t)he federal district court has no authority to review a state court's final judgement in an individual proceeding"(p.4).

ARGUMENT: REASONS FOR GRANTING THE WRIT

THE EIGHTH CIRCUIT IMPROPERLY AFFIRMED DISMISSAL OF PETITIONERS' LAWSUIT BY DECIDING THAT RESPONDENTS COULD NOT BE SUED. THE SUPREME COURT HAS OFTEN RULED THAT THE PROVISIONS OF THE FOURTEENTH AMENDMENT, AND 42 U.S.C. $1983, WHICH ENFORCES THOSE PROVISIONS, APPLY TO STATE COURTS AND TO STATE COURT JUDGES.

Since the Eighth Circuit gave four reasons for affirming dismissal of petitioners' complaint, reviewing the question "Whether a state court, and the judges of a state court, can be sued for violating equal protection of the laws?" requires answering at least four subsidiary questions:

1) Whether individual judges are absolutely immune from civil suits in $1983 actions?

2) Whether the eleventh amendment makes state courts invulnerable to $1983 suits?

3) Whether a state court as an entity is a "person" liable to suit within the meaning of the Civil Rights Laws? and,

4) Whether a federal court has the authority to

review a final judgement of a state court in order to determine if the state court has violated constitutional rights?

In answering each of these questions, the Eighth Circuit decision is in conflict with decisions of the Supreme Court on the same, and similar, matters. In affirming dismissal, the Eighth Circuit sanctioned an immunity from liability which is such a far departure from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's power of supervision.

Judicial Immunity Does Not Bar a §1983 Suit

The Supreme Court has recently ruled that injunctive and declarative relief are available against judges in suits brought under §1983, Pulliam v. Allen, 104 S.Ct. 1970,1981 (1984):

> We remain steadfast in our conclusion . . . that Congress intended §1983 to be an independent protection for federal rights and find nothing to suggest that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review.

Therefore, judges are not absolutely immune from a §1983 suit.

Amendment 11 Does Not Prevent a §1983 Suit

The Supreme Court has held that "The Eleventh Amendment, and the principle of state sovereignty which it embodies . . . are necessarily limited by the enforcement provisions of section 5 of the Fourteenth Amendment", Fitzpatrick v. Bitzer, 427 U.S. 445,456 (1976). Over one hundred years ago, in Ex parte Virginia, 100 U.S. 339,346-7 (1880), the Court explained why state sovereignty should not prevent the enforcement of civil rights:

> The prohibitions of the Fourteenth Amendment are directed to the States, and they are to a degree restrictions of State power. It is these that Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be legislative, executive, or judicial. Such enforcement is no invasion of State sovereignty. No law can be, which the people of the States have, by the Constitution of the United States, empowered Congress to enact.

Ex parte Virginia recognized the common-sense principle that a state, its officers, and its agents, cannot be immune from the provisions

of the Fourteenth Amendment, or else the Amendment and the Civil Rights Laws would be meaningless. This reasoning has been affirmed many times, and has been applied specifically to the state courts. For example, Shelley v. Kraemer, 334 U.S. 1,18 (1948) emphasizes,

> (I)t has never been suggested that state court action is immunized from operation of (the) provisions (of Amendment 14) simply because the act is that of the judicial branch of the state government.

Therefore, eleventh amendment immunities do not extend to make state courts invulnerable to civil rights suits.

State Courts are "Persons" Liable under §1983

Although the Supreme Court has never explicitly answered the specific question of "Whether a state court as an entity is a 'person' liable to suit within the meaning of the Civil Right Laws?", the Court has repeatedly decided that §1983 does apply to state court actions. Therefore, the logical conclusion is that state courts must be included as "persons" liable under that law.

For example, Mitchum v. Foster, 407 U.S. 225 (1972) reviewed the history of §1983 and then observed, at 240-242:

> It is clear from the legislative debates surrounding passage of §1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment "against State action . . . whether that action be executive, legislative or judicial." Proponents of the legislation noted that state courts were being used to harass and injure citizens, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights . . . (Congress) realized that State officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the State courts.

This clear reasoning that the Civil Rights Laws apply to state court action began with Virginia v. Rives, 100 U.S. 313,317 (1880) and has been affirmed many times since, recently in Supreme Court of Virginia v. Consumers Union, 446 U.S. 719,735,n.14 (1980) and in Patsy v. Florida Board of Regents, 457 U.S. 496,503 (1982). Yet the Eighth Circuit continues to insist that state

courts are not "persons" and therefore §1983 does not apply to them. In support, they cite cases which are no longer relevant. Petitioners have clearly shown that all decisions which have said that "state courts are not 'persons' liable under §1983" relied upon a single Supreme Court ruling, Monroe v. Pape, 365 U.S. 167 (1961), which has since been overruled, by Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). Thus, there is no basis for a decision that state courts are not "persons" liable under §1983 (For the details of petitioners' analysis, see Addendum B).

The Eighth Circuit acknowledges that the cases they cite may no longer apply, but still hold "for the proposition that a court is not a 'person' subject to the Civil Rights Acts, we believe these cases remain good law" (Decision, p.3,n.4). However, they offer no reason for this "proposition as good law" other than a convoluted misreading of Monell.

Despite the overwhelming number of times the

Supreme Court has found that §1983 applies to state court action, some federal courts still insist it does not apply. Clearly, it is time for an explicit ruling by the Supreme Court that state courts are "persons" liable to suit within the meaning of the Civil Rights Laws.

Federal Authority Can Be Used to Review

Federal courts certainly have the authority to review a state court judgement to decide if constitutional rights have been or are being violated. That is one of the conclusions from Pulliam, supra, and from most of the other cases cited above. Obviously, one of the only ways unconstitutionally discriminatory action by a state court can show itself is through the decisions that court makes, so it is almost inevitable that a review of a decision is part of an equal protection suit. Federal courts also have the authority to decide appropriate remedies, even if they decide that a petitioner's requested remedies may be inappropriate.

For the Eighth Circuit to find that federal

courts have no authority in these matters unnecessarily restricts the power of the federal judiciary and defeats the very purpose of the Civil Rights Laws:

> The very purpose of §1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights - to protect the people from unconstitutional action under state law, "whether that action be executive, legislative, or judicial". Mitchum, supra, at 242, Patsy, supra, at 503.

The Eighth Circuit's citation of District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) (Decision,p.4) completely misses this point. In Feldman, plaintiffs were challenging as unconstitutional a specific state law after the law was applied in an individual instance. Such a case clearly should go from the highest state court directly to the Supreme Court, under 28 U.S.C. §1257(3). Petitioners' federal case is substantially different. Petitioners are not challenging the constitutionality of a statute when it is applied. Rather, petitioners contend that the state courts, in rendering a particular

verdict, chose to discriminate, in violation of the constitutional guarantee of equal protection of the laws. Thus, state court action, not a state statute as applied, was unconstitutional. In other words, otherwise valid laws were "applied and administered by public authority with an evil eye and an unequal hand", Yick Wo v. Hopkins, 118 U.S. 356,373 (1886). As with Yick Wo, the proper proceeding for redress, and the only legal forum available to petitioners, is a civil rights suit originating in federal district court.

CONCLUSION

This case presents the Supreme Court with the opportunity to make an absolutely clear ruling on whether a state court, and the judges of a state court, can be sued for violating constitutional rights. For the above reasons, petitioners respectfully request that this petition for writ of certiorari be granted, and that the judgement dismissing petitioners' complaint be reversed.

Respectfully submitted,

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June 18, 1986

APPENDIX

Eighth Circuit Decision
District Court Order
Addendum A: Petitioners' Complaint
Addendum B: Analysis of all rulings in which "state courts are not 'persons'"

United States Court of Appeals
for the Eighth Circuit

No. 85-1580

David Harris, an individual and Yes to Stop Callaway Committee, an unincorporated association, Appellants, v. Missouri Court of Appeals, Western District, Chief Judge William E. Turnage, et al. and Supreme Court of Missouri, Chief Justice Albert L. Rendlen, et al., Appellees.	* * * * * * * * * * * * * * *	Appeal from the United States District Court for the Western District of Missouri.

Submitted: February 12, 1986
Filed: March 28, 1986

Before ROSS, Circuit Judge, BRIGHT, Senior Circuit Judge, and ARNOLD, Circuit Judge.

BRIGHT, Senior Circuit Judge.

David Harris and Yes to Stop Callaway Committee (appellants) appeal the district court's (1) dismissal of their complaint. In this complaint, appellants requested both monetary damages, and a remand to, or injunctive relief against, the Missouri Court of Appeals pursuant to 42 U.S.C. 1983 (1982). In their complaint, appellants named the Missouri Court of Appeals, the Supreme Court of Missouri, and the individual Missouri judges of

these courts as defendants. We affirm the dismissal of the action.

Appellants allege that the Missouri Court of Appeals discriminated against them. In November of 1984, appellants attempted to place "Proposition A" (relating to a nuclear power plant) on a Missouri ballot via an initiative petition. When the Missouri Secretary of State reviewed the signatures on this petition, he found an insufficient number of valid signatures to allow the proposition's inclusion on a ballot. The Missouri Circuit Court of Cole County affirmed his denial (2).

At approximately the same time, another group of Missouri citizens similarly gathered signatures to place "Amendment 7" (relating to parimutuel betting) on a ballot. The Missouri Secretary of State certified enough of these signatures as valid to permit the inclusion of the amendment on a ballot. This certification was affirmed by the same Cole County court that had affirmed the Secretary's denial of appellants' initiative (3).

Both Cole County decisions were independently appealed to the Missouri Court of Appeals, which affirmed both decisions in separate opinions. Appellants then filed suit in the United States District Court for the Western District of Missouri, alleging that the Missouri Court of Appeals discriminated against appellants by utilizing a different review criterion for signature certification in its evaluation of Proposition A than that used in reviewing Amendment 7. The district court dismissed the complaint and this appeal followed.

We affirm the district court's dismissal. Individual judges are immune from civil suit when acting within their judicial capacity, even in s.1983 Civil Rights actions. See Stump v. Sparkman, 435 U.S. 349,355-57 (1978); Patten v. Glaser, 771 F.2d 1178,1179 (8th Cir.1985) (per curiam). Likewise, courts as entitities are not vulnerable to s.1983 suits, because they are protected by state immunity under the eleventh amendment. See Alabama v. Pugh, 438 U.S. 781,

782 (1978) (per curiam). A court is not a "person" within the meaning of the Civil Rights Act. See, e.g., Coopersmith v. Supreme Court, 465 F.2d 993,994 (10th Cir.1972) (per curiam); Zuckerman v. Appellate Division, 421 F.2d 625, 626 (2d Cir.1970) (4). Therefore, appellants fail to name a party liable to suit.

Appellants further argue the Missouri Court of Appeals is a "person" subject to s.1983 suit by virtue of Monell v. Department of Social Services 436 U.S. 658 (1978). Appellants misinterpret Monell. The Monell decision held that municipal corporations (cities) were "persons" for purposes of the Civil Rights Act. The Monell Court found no constitutional protection extending to a city so as to shield it from a civil rights prosecution. As such, no reason existed to immunize a city from suit, when individual officers of a city had long been subject to civil rights actions. See Monell, supra, 436 U.S. 687,690 n.54.

The Monell rationale permitting suit against a municipality under s.1983 does not apply to a

"court". First, Monell expressly stated that only local government units, "not considered part of the State", would be unprotected by the eleventh amendment. Id. at 690 n.54. The Missouri state courts, however, must be deemed a part of the State of Missouri, and its adjudicative voice. Second, Monell observed that individual city officers were being sued to redress discriminatory acts perpetrated by and for the benefit of the city itself. Id. at 687. From this reasoning, it is clear that had the individuals been immune from suit, the city would also have been immune. Here, however, the individual judges are immune. Given this immunity, and given the eleventh amendment protection granted these courts as state instrumentalities, it follows that Monell does not compel a finding that the Missouri courts are "persons" under the Civil Rights Acts. Accord Familias Unidas v. Briscoe, 619 F.2d 391,404 (5th Cir.1980) (county immune from suit when suit derived from judicial actions of immune judge).

Because appellants fail to name a nonimmune party, appellants' complaint was properly dismissed. We note, however, that the result would be the same if a nonimmune party were involved. The federal district court has no authority to review a state courts's final judgement in an individual proceeding. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462,482-84 (1983). Appellants, by the remedies they request, ask the federal courts to oversee the Missouri state courts. This is neither the function nor the purpose of the federal judicial system. A state's judicial system is not subject to direct or indirect review in either the federal district courts or the federal courts of appeal. In some cases, of course, the United States Supreme Court may accept this type of state case for review under writ of certiorari. 28 U.S.C. 1257 (1982). However, we fail to see how an equal protection violation flows in this case from no more than arguably inconsistent opinions reached on separate cases decided by a state

appellate court. The district court's dismissal is therefore affirmed.

Affirmed.

Footnotes:

(1) The Honorable Scott O. Wright, United States District Judge for the Western District of Missouri.

(2) Yes to Stop Callaway Committee v. Kirkpatrick, No. CV 184-859CC (Cir. Ct. Cole County Sept. 10), aff'd, 685 S.W.2d 209 (Mo.Ct.App.1984)

(3) Payne v. Kirkpatrick, No. CV 184-907CC (Cir. Ct. Cole County Oct. 2), aff'd, 685 S.W.2d 891 (Mo.Ct.App.1984).

(4) We realize that both Coopersmith and Zuckerman were decided before Monell v. Department of Social Services, 436 U.S. 658 (1978). Nevertheless, for the proposition that a court is not a "person" subject to the Civil Rights Act, we believe these cases remain good law. See our discussion of the Monell decision, infra.

United States Court of Appeals
for the Eighth Circuit

No. 85-1580-WM

David Harris, etc., et. al., Appellants,	*	Appeal from the United States District Court for the Western District of Missouri
vs.	*	
Missouri Court of Appeals, Western District, et al., Appellees.	*	

David Harris and Yes to Stop Callaway Committee (appellants) have submitted an "Informal Letter to the Court" which, under 8th Cir. Rule 15, Committee Comment, we will consider as a combined petition for rehearing and correction of technical errors. We deny the petition for rehearing and correct one technical error.

We have carefully considered the points raised by appellants in support of their petition for rehearing. We are satisfied that the request for rehearing should be, and is accordingly, denied.

Appellants accurately identify a technical error in the factual statement of their case. (Appellants' other alleged technical error does not require correction). Accordingly, we order

that paragraph two on page two be deleted and replaced with the following paragraph:

> At approximately the same time, another group of Missouri citizens similarly gathered signatures to place "Amendment 7" (relating to parimutuel betting) on a ballot. The Missouri Secretary of State again failed to certify enough of these signatures as valid to permit the inclusion of the amendent on a ballot. However, the same Cole County court that had affirmed the Secretary's denial of appellants' initiative reversed the Secretary's decision and ordered Amendment 7's inclusion on a ballot (3).

May 8, 1986

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

DAVID HARRIS, an individual, and YES TO STOP CALLAWAY COMMITTEE, an unincorporated association,	)	
Plaintiffs.	)	
vs.	)	No. 85-4009-CV-C-5
MISSOURI COURT OF APPEALS, WESTERN DISTRICT, Chief Judge William E. Turnage, et al., and SUPREME COURT OF MISSOURI, Chief Justice Albert L. Rendlen, et al.,	)	
Defendants.	)	

ORDER

Pending for the Court's decision is defendants' motion to dismiss. For the following reasons, defendants' motion will be sustained.

The facts necessary for the resolution of this matter may be briefly stated. Plaintiffs' complaint centers around the Missouri Court of Appeals disposition of two similar cases involving initiative petitions. These two cases were heard and decided prior to the Missouri general election last November. The first case involved "Proposition A", an initiative petition seeking to prohibit the operation of nuclear power plants in Missouri. In September of 1984, a Cole County

Circuit Court determined that the Proposition A initiative petition lacked the number of signatures required for placement on the general election ballot. Plaintiffs appealed that decision to the Missouri Court of Appeals - Western District. In an October 5 opinion, the Court of Appeals held that the Circuit Court properly determined that the initiative petition lacked the required number of signatures and that the Secretary of State properly refused to place Proposition A on the ballot. Yes to Stop Callaway Commitee, et al. v. Kirkpatrick, et al., W.D. 36,299 slip op. at pg. 6 (Mo. W.D. Oct. 5, 1984). Thus, Proposition A was not placed on the November ballot.

A second, similar, case was heard by the same panel of the Missouri Court of Appeals shortly thereafter. This case, again involving an initiative petition, concerned "Amendment 7", a proposal to allow pari-mutuel betting in Missouri. The appeal likewise arose from a challenge in Cole County Circuit Court to the sufficiency of signatures, however, in this case, the Circuit Court

determined the requisite number of valid signatures existed, and directed that Amendment 7 be placed on the November ballot. In a lengthy opinion, the Court of Appeals affirmed.

In ruling a motion to dismiss, the Court assumes as true the allegations of plaintiff's complaint and will not grant dismissal for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41,45 (1957).

Plaintiffs contend that the Missouri Court of Appeals reached these two (different) conclusions despite applying similar laws. Plaintiffs aver that if the laws as applied in the Amendment 7 case had been applied similarly in plaintiffs' case, a sufficient number of signatures would have been validated and Proposition A would have been balloted, and vise versa, i.e., if the law as applied to Propsition A would have been applied similarly to Amendment 7, Amendment 7 would not have been placed on the ballot.

Plaintiffs thus bring this action under 42 U.S.C. 1983 claiming the actions of the Missouri Court of Appeals (and Missouri Supreme Court by reason of their refusal to accept transfer of the case) deprived them of equal protection of the law contrary to the Fourteenth Amendment to the United States Constitution. Plaintiffs seek monetary damanges and an order by this Court directing the Missouri Secretary of State to place Proposition A on the ballot of Missouri's next general election.

42 U.S.C. 1983 provides a civil remedy in instances where a party's rights under the Fourteenth Amendment to the United States Constitution are violated by a person acting under color of state law. It is well-settled that a state and its agencies are not "persons" subject to suit under the Civil Rights Act. Alabama v. Pugh, 438 U.S. 781,782 (1978). The Missouri Court of Appeals and Supreme Court of Missouri are part of the judicial branch of the State of Missouri, created by the Missouri Constitution, Article V. As entities, courts of a state are not "persons"

subject to suit under 42 U.S.C. 1983. Accord Copersmith v. Supreme Court of Colorado, 465 F.2d 993,994 (10th Cir.1972). Thus, plaintiffs' suit cannot be brought against defendant courts as entities.

Insofar as plaintiffs' lawsuit is brought against the judges of the respective courts as individuals, dismissal is yet appropriate. A damage action against these judges arising out of actions indisputably undertaken in their judicial capacity is barred by the well-recognized doctrine of judicial immunity. As early as 1872, the United States Supreme Court recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, (should) be free to act upon his own convictions, without apprehension of personal consequences to himself". Stump v. Sparkman, 435 U.S. 349,355 (1978). Judges are not liable to civil actions for their judicial acts, even when such acts are alleged to have been done mali-

ciously or corruptly. Id. Moreover, judicial immunity is applicable under s.1 of the Civil Rights Act of 1871, 42 U.S.C. 1983, as Congress expressed no intent to abolish the long-established principle. Pierson v. Ray, 386 U.S. 547 (1967).

Finally, to the extent that plaintiffs desired this Court to order the Missouri Secretary of State to place Proposition A on the next general election ballot, dismissal is again appropriate. This Court will not allow plaintiffs to collaterally attack the decision of the Missouri Supreme Court through the use of the equitable devices in the Federal Court. Moreover, important considerations of federalism mitigate against the use of federal equitable relief. Principles of equity, comity, and federalism prevent a Federal Court from enjoining ongoing state judicial proceedings, see Younger v. Harris, 401 U.S. 37 (1971). These principles have applicability where injunctive relief is sought against the executive branch of an agency or state government, such as the Mis-

souri Secretary of State (an unnamed party). Cf. Rizzo v. Goode, 423 U.S. 362 (1976); O'Shea v. Littleton, 414 U.S. 488 (1974). The rather unique relief plaintiffs seek attempts to make a federal case out of their dissatisfaction with the Missouri Court of Appeals' disposition of their case. If indeed their actions have deprived plaintiffs of equal protection, the proper course of action would have been a petition of certiorari to the United States Supreme Court. This Court is not a proper forum for collateral attacks on State Court decisions ostensibly raised as s.1983 actions.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted.

SCOTT O. WRIGHT
United States District Judge

April 8, 1985

ADDENDUM A: PETITIONERS' COMPLAINT

Following is the text of petitioners' initial pro se complaint, which was filed January 4, 1985 in the United States District Court for the Western District of Missouri. The exhibits referred to in the text are not included in this Addendum.

COMPLAINT

Come now Plaintiffs, and for their claim and cause of action, state and allege as follows:

I. JURISDICTION

1. Jurisdiction is founded on the existence of a Federal question. The action arises under U.S.C., Title 42, Section 1983, and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, Section 1, as hereinafter more fully appears.

II. PARTIES

2. Plaintiff David Harris is a citizen, resident, taxpayer and registered voter of the United States and of the State of Missouri, and is also treasurer and chief officer of the YES to Stop Callaway Committee.

3. Plaintiff YES to Stop Callaway Committee is an unincorporated association, registered with the Secretary of State of Missouri as a political

campaign committee, formed for the purpose of enacting, through the initiative process, a law to prohibit the operation of nuclear power plants in Missouri (Exhibit A).

4. Plaintiffs are persons for the purposes of U.S.C., Title 42, Section 1983, and for purposes ofthe Fourteenth Amendment.

5. Defendants (hereinafter "Defendants" or "Appeals Courts" or "Supreme Court") are judicial authorities of the State of Missouri.

6. Decisions and actions of the Defendants are considered state actions for the purposes of the Fourteenth Amendment.

7. Plaintiffs have been injured by actions of the Defendants, as hereinafter more fully appears, and are thereby entitled to bring this complaint, and are entitled to demand relief.

III. BACKGROUND

8. In October 1984, the Appeals Court rendered different decisions in two similar cases involving initiative petitions. The first case involved Plaintiffs' proposed law (designated "Proposition

A"). The second case involved a proposed constitutional amendment to legalize pari-mutuel betting in Missouri (designated "Amendment 7").

9. The Appeals Court heard Plaintiffs' case on October 1, decided the case that same day, and issued its written opinion October 5 (YES to Stop Callaway Committee v. Kirkpatrick, WD 36299) (Exhibit B). That decision kept Proposition A off the November 6, 1984 election ballot.

10. The Appeals Court heard the pari-mutuel case on October 17, decided it on October 24, but did not issue its written opinion until mid-December (Payne v. Kirkpatrick, WD 36365) (Exhibit C). That decision placed Amendment 7 onto the November 6th election ballot.

11. Plaintiffs' case was an appeal of a September 10 ruling from the Circuit Court of Cole County (CV184-859CC) (Exhibit D).

12. The Circuit Court had ruled that Proposition A was short of the required number of signatures in a single congressional district, District 7. The original requirement in District 7 was

11,654 signatures. That requirement is 5% of 233,079, which was originally the total vote cast in the previous gubernatorial election in 1980.

13. Initially, the Secretary of State had determined that only 11,564 signatures on Plaintiffs petitions were valid in District 7.

14. After correcting for mistakes, and giving Plaintiffs the "benefit of the doubt", the Circuit Court ruled that 11,723 signatures were valid, which should have been enough to meet the requirement.

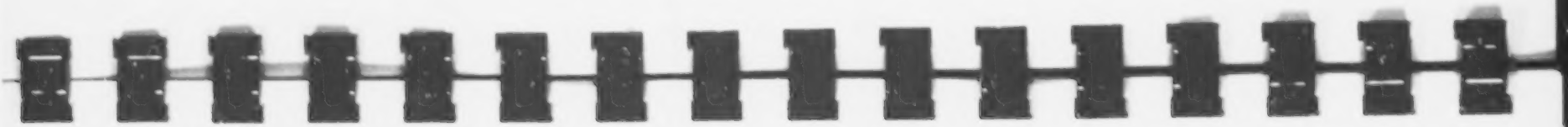
15. But the Circuit Court also raised the requirement in District 7 by 241, to 11,895, based on a revised total of 237,887 in the 1980 gubernatorial election. Use of the revised total left Proposition A short of the requirment.

16. In its October 5 ruling keeping Proposition A off the ballot, the Appeals Court: 1) used the revised signature requirement for District 7, and 2) overruled counting as valid the extra signatures counted as valid by the Circuit Court. In fact, the Appeals Court ruled explicitly that the

only signatures which were valid on an initiative petition were ones in which the signer's address was the same as the address at which the signer was registered to vote.

17. The Appeals Court ruled the opposite on these two crucial issues in Payne, and placed Amendment 7 onto the ballot. In its written opinion, the Appeals Court: 1) used the original vote total to determine the signature requirment in District 7, and 2) counted as valid over 500 signatures counted as valid by the Circuit Court (CV184-907CC) (Exhibit E). Many of these signatures were similar to signatures counted as valid by the Circuit Court in Plaintiffs' case but later overruled by the Appeals Court.

18. Further, on the critical issue of the signature requirement in District 7, Plaintiffs submitted to the Appeals Court the relevant portion of the Circuit Court ruling in Payne as one of several grounds for rehearing. The motion for rehearing was overruled, and transfer denied, without comment, on October 18 (Exhibit F), the



day after the Appeals Court heard Payne.

19. Thus, in both cases, the same arguments were presented regarding the signature requirement and similar arguments were presented regarding which signatures should be counted as valid, yet the laws were applied differently, and different decisions were made.

20. On October 25, the Supreme Court refused, without comment, to review the Appeals Court decision in Plaintiffs' case (Exhibit G), even though the conflict between the two decisions was exphasized.

21. If the laws as applied in Payne had been applied to Plaintiffs' case, enough signatures would have been counted as valid to qualify for the ballot, and the Appeals Court or the Supreme Court would have ordered Proposition A placed onto the election ballot. If the laws as applied in Plaintiffs' case had been applied to Payne, Amendment 7 would not have had enough valid signatures to be placed onto the election ballot.

22. Defendants did not apply the laws equally,

and did not make the same decisions in both cases, because they wanted to keep Plaintiffs' initiative off the election ballot.

IV. CAUSE OF ACTION

23. Defendants' actions, on their face, discriminated intentionally and purposefully against Plaintiffs.

24. Even if Defendants' decisions were initially the result of judicial error or incompetence, Defendants' refusals to rehear the case, to correct the errors, or to resolve the discrepancies, and the Appeals Courts' long delay in issuing its written opinion in Payne, show an intent to maintain the discrimination.

25. Even if the discrimination was not intentional, Defendants' actions clearly had a discriminatory effect, by keeping Plaintiffs' anti-nuclear initiative off the ballot, while putting the pari-mutuel initiative onto the ballot.

26. Defendants' actions injured Plaintiffs by making Plaintiffs initiative efforts useless, and by denying Plaintiffs and other voters of Missouri

the right and opportunity, obtained by the collection of the required number of signatures, to decide whether to stop a nuclear power plant which is now in operation.

27. Plaintiffs spent nearly $40,000 on the petition drive to get their proposed law onto the election ballot. Defendants' actions made Plaintiffs' expenditures worthless, stymied fundraising efforts and left Plaintiffs deeply in debt.

28. Plaintiff Harris devoted more than two years of unpaid work to the initiative. Any financial compensation for his work, which would have amounted to at least $21,000, and many of his plans for the future, were based on successfully getting a statewide vote on banning nuclear power plants. Defendants' actions prevented compensation and have adversely affected his plans.

29. Defendants' actions have allowed the Callaway nuclear power plant to go into operation, with resultant damages on which no price can be placed.

30. Defendants' actions also restrict and con-

fuse the initiative process and call into question the integrity of the state courts.

31. The Equal Protection Clause of the Fourteenth Amendment says that a State shall not "deny any person within its jurisdiction the equal protection of the laws".

32. Equal protection requires that the laws of a state be applied equally to all persons in the same or similar situations.

33. Equal protection also requires that state actions regulating elections should not violate the Fourteenth Amendment. Regarding initiative and referendum, Missouri's laws embody that fact, authorizing the adoption of ". . . rules to ensure the uniform, complete and accurate checking of petition signatures" (116.130.4 RSMo 1984, emphasis added).

34. Equal protection is denied when it is apparent that the same law or procedure would not lawfully be applied to persons in the same place or under like circumstances.

35. The facts and circumstances outlined

above clearly show that Defendants' actions discriminated against Plaintiffs, and denied to Plaintiffs the equal protection of the laws, in violation of the Fourteenth Amendment.

V. RELIEF

36. The right to relief under the Equal Protection Clause is not diminished by the fact that the discrimination relates to political rights.

37. Plaintiffs ask that this Court find Defendants' actions in YES to Stop Callaway Committee v. Kirkpatrick to be in violation of the Equal Protection Clause of the Fourteenth Amendment.

38. Based on this finding, Plaintiffs ask that this Court remand Plaintiffs' case to the Supreme Court of Missouri, or to the Missouri Court of Appeals, Western District, for correction of the discrimination.

39. In the alternative to remanding Plaintiffs' case to the state courts, Plaintiffs ask that this Court find that the correct application of the laws and requirements in question is the application argued by Plaintiffs and affirmed by

the Appeals Court in Payne, and declare that sufficient valid signatures had been submitted to qualify Plaintiffs' proposed law for the election ballot.

40. Based on the findings asked for in paragraph 39, Plaintiffs ask that this Court order the Secretary of State of Missouri, and those authorized to act on his behalf, to place the measure known as Proposition A onto the ballot of the next general election, or onto any earlier ballot this Court deems appropriate, in the same manner as if Proposition A had been certified to be on the ballot.

41. Plaintiffs also ask for monetary relief from Defendants, in a sum not less than $61,000 for actual damages, and in a sum not less than ten times that amount, $610,000, for punitive damages.

42. Plaintiffs also ask that this Court make or issue any other and additional relief and orders this Court deems just and proper.

ADDENDUM B: ANALYSIS OF ALL RULINGS IN WHICH "STATE COURTS ARE NOT 'PERSONS'"

The following analysis was submitted as part of petitioners' brief to the Court of Appeals. Its purpose was to show the court in detail that there is no basis for any rulings which have said that "state courts are not 'persons'". It was shown that all such rulings ultimately relied on Monroe v. Pape, 365 U.S. 167 (1961), which has since been overruled.

The District Court order cites two cases in support of the judgement that "courts of a state are not 'persons' subject to suit under 42 U.S.C. 1983" (Order, p.3).

ALABAMA V. PUGH

The first case cited is Alabama v. Pugh, 438 U.S. 781 (1978). Alabama v. Pugh says nothing about state courts and does not address a section 1983 issue, finding only that a particular mandatory injunction "against the state (of Alabama) is barred by the Eleventh Amendment". This case was cited erroneously.

COOPERSMITH V. SUPREME COURT OF COLORADO

The second case is Coopersmith v. Supreme Court of Colorado, 465 F.2d 993 (10th Cir.Colo. 1972). Coopersmith says that the Colorado Supreme Court and State Bar Association are not

persons, citing in support Monroe, Allison v. California Adult Authority, 419 F.2d 822 (9th Cir.Cal.1969), Whitner v. Davis, 410 F.2d 24 (9th Cir.Wash.1969), Deane Hill Country Club Inc. v. City of Knoxville, 379 F.2d 321 (6th Cir.Tenn. 1967), and Salazar v. Dowd, 256 F.Supp. 220 (D.C.Colo.1966).

Allison says nothing explicit about state courts, but does say that state agencies are not persons, relying on Bennett v. People of the State of California, 406 F.2d 36 (9th Cir.Cal. 1969) and Clark v. Washington, 366 F.2d 678 (9th Cir.Wash.1966). Bennett, which reasons that "state agencies are but arms of state government", relies on Clark and on Sires v. Coles, 320 F.2d 877 (9th Cir.Wash.1963). Clark says a state agency is not a person because a state is not a person, also relying on Sires. Sires relies solely on Monroe and is one of the only decisions to explicitly reveal its reasoning, at 879: "Congress did not undertake to bring municipal corporations within the ambit of s.1983 . . .

The considerations that have led to this conclusion . . . indicate that this is likewise true of a state or county".

Whitner says both that a state is not a person and that a state college, as a state agency, is not a person. For the college decision no references are given. The state decision relies on Williford v. People of California, 352 F.2d 474 (9th Cir.Cal.1965). Williford expresses reasoning similar to Sires, relying on Monroe and on Charlton v. City of Hialeah, 188 F.2d 421 (5th Cir.Fla.1951), which says, like Monroe ten years later, that a municipality is not a liable "person".

Deane Hill also asserts that a municipality is not liable, citing Monroe and U.S. ex rel Lee V. State of Illinois, 343 F.2d 120 (7th Cir.Ill. 1965), which also cites Monroe.

Salazar says that the City of Denver is not a person, relying on Monroe and on Egan v. City of Aurora, 365 U.S. 514 (U.S.Ill.1961), which is the first of three decisions to affirm Monroe.

O'CONNOR V. STATE OF NEVADA

The foregoing analysis shows that at the bottom of Coopersmith lies Monroe. This is also true of O'Connor v. State of Nevada, 507 F. Supp. 546,550 (D.C.Nev.1981), which was cited in defendants' "Motion to Dismiss" (p.3). O'Connor found that those who are not persons include: a state bar association, relying on Clark, Coopersmith, Silverton v. Department of Treasury, 449 F.Supp. 1004 (C.D.Cal.1978), and Saier v. State Bar of Michigan, 293 F.2d 756 (7th Cir. Mich.1961); a state supreme court, citing Coopersmith, Harris v. Louisiana State Supreme Court, 334 F.Supp. 1289 (E.D.La.1971), and Fox v. Juvenile Court, 321 F.Supp. 67 (E.D.Pa.1970); and a state and district court, Quern v. Jordan, 440 U.S. 332 (U.S.Ill.1979), Alabama v. Pugh, and Quadra v. Superior Court of San Francisco, 378 F.Supp. 605 (N.D.Cal.1974).

Silverton relies on Clark and Saier. Saier says that individual judges acting in good faith and in their judicial capacity have judicial immu-

nity, but says nothing about state courts (or state bar associations) and cites no cases.

Harris relies on Zuckerman v. Appellate Division, Second Department, Supreme Court of New York, 421 F.2d 625 (2d Cir.NY.1970). Zuckerman relies on Monroe, Williford and Clark, repeating the reasoning used in Williford, and extending it to any "part of the judicial arm of the State of New York".

Fox simply says the "Juvenile Court is not a 'person'", giving no citations.

Quern, like Alabama v. Pugh, says nothing about state courts. Instead, it affirms Edelman v. Jordan, 415 U.S. 651 (U.S.Ill.1973) saying that states are protected by the Eleventh Amendment from suits for retrospective monetary relief, but not from suits for prospective injunctive relief.

Quadra cites Zuckerman, Clark, Harris, Schackman v. Arnebergh, 258 F.Supp. 983,993 (C.D. Cal.1966), City of Kenosha v. Bruno, 412 U.S. 507,513 (U.S.Wis.1973) and Monroe. Schackman

says only that "Board of Police Commisssioners and Municipal Courts are not persons", and gives no citations. Kenosha says a city is not a person, and is the second of three cases to affirm Monroe.

Thus, the authority of O'Connor also reduces to Monroe v. Pape. To find out whether this is true of all cases which have ruled that state courts are not person, appellants looked through all the cases annotated in U.S.C.A., Title 42, Section 1983. The only note which had opinions of this sort was Note 1075, "Persons within section - courts".

LOUIS V. SUPREME COURT OF NEVADA

Louis v. Supreme Court of Nevada, 490 F.Supp. 1174 (D.C.Nev.1980) says both that a state is not a person, citing Wiesenfeld v. State of New York, 474 F.Supp. 1141 (S.D.NY.1979), and that a state supreme court is not, citing County of Lancaster v. Philadelphia Electric Co., 386 F.Supp. 934 (E.D.Pa.1975) and Moity v. Louisiana State Bar Association, 414 F.Supp. 180 (E.D.La.1976), aff'd

537 F.2d 1141 (5th Cir.La.1976).

Wiesenfeld relies on Alabama v. Pugh, Monroe, Bogard v. Cook, 586 F.2d 399 (5th Cir.Miss.1978) and Gras v. Stevens, 415 F.Supp. 1148,1150 (S.D. NY.1976). Bogard, like Alabama v. Pugh, says a state is protected by the Eleventh Amendment. Gras says a state is not a person, citing Monroe, Kenosha, Curtis v. Everette, 489 F.2d 516 (3rd Cir.Pa.1973), Williford, Lee and Collins v. Moore 441 F.2d 550 (5th Cir.Fla.1971). Curtis relies on Moor v. County of Alameda, 411 U.S. 693 which is the third of the three cases which affirm Monroe, Monroe, and U.S. ex rel Gittlemacker v. County of Philadelphia, 413 F.2d 84 (3rd Cir.Pa. 1969), which says that a city, county and commonwealth are not persons, citing in footnotes many cases in which "(t)he doctrine of Monroe v. Pape has been extended to states" and to "bodies politic of any kind". Collins relies on Monroe, Whitner, and Westberry v. Fisher, 309 F.Supp. 12, 18-20 (D.C.Me.1970), which cites Monroe, Whitner, Williford, King v. McGinnis, 289 F.Supp. 466

(S.D.NY.1968), and Gittlemacker. King cites only Fisher v. City of New York, 208 F.Supp. 681 (S.D. NY.1962), which relies only on Monroe.

Lancaster says that neither the commonwealth of Pennsylvania nor its Supreme Court are persons, citing Gittlemacker, Meyer v. New Jersey, 460 F.2d 1252 (3rd.Cir.NJ.1972), Safeguard Mutual Insurance Co. v. Pennsylvania, 372 F.Supp. 939 (E.D.Pa.1974), Zuckerman and Harris. Meyer says that a state canot be sued, citing Gittlemacker and Gambocz v. Subcommittee (of) New Jersey Legislature, 423 F.2d 674 (3rd Cir.NJ.1970), which references Monroe. Safeguard says that "(t)o the extent that the present suit may be based on s.1983, we simply note that Pennsylvania is not a 'person'", citing Monroe, Moor, Gittlemacker, Fear v. Commonwealth of Pennsylvania, 413 F.2d 88 (3rd Cir.Pa.1969), U.S. ex rel Foreman v. State of New Jersey, 449 F.2d 1298 (3rd.Cir.NJ. 1971), and Meyer. Fear relies on Gittlemacker, and Foreman relies on Gittlemacker and Fear.

Moity cites Lancaster, Quandra, and Harris. On jurisdiction, it cites Kenosha and Muzquiz v. City of San Antonio, 520 F.2d 993,996 (5th Cir. Tex.1975), which relies on Monroe.

Thus, Louis also reduces to Monroe v. Pape.

MISCELLANEOUS CASES

Erdmann v. Stevens, 458 F.2d 1205 (2nd Cir. NY.1972) says that judges are not immune from injunctive relief when sued as individuals, even though a state court is not a person, referring to Zuckerman as support for the latter statement.

Brown v. Supreme Court of Nevada, 476 F.Supp. 86 (D.C.Nev.1979) ruled similarly to Erdmann, citing Quern in support.

Hamilton v. Covington, 445 F.Supp. 195 (D.C. Ark.1978) says "It has often been held that a political body established by state law is not a person within s.1983", citing Monroe.

Runnels v. Parker, 263 F.Supp. 271 (D.C.Cal. 1967) does not mention courts but asserts the immunity of a municipal police commission, citing Jordan v. Kelly, 223 F.Supp. 731 (W.D.Mo.1963),

which relies in part on Monroe.

Pinkus v. Arnegergh, 258 F.Supp. 996 (D.C. Cal.1966) says a municipal court is not a person, but gives no reason.

AUBUCHON V. STATE OF MISSOURI

Appellants also found reference to a recent decision by this court which affirmed dismissal of a 42 U.S.C. 1983 suit on the ground that s. 1983 "is directed at individuals acting under color of state law, not individual states. The State of Missouri is not a proper party to an action brought under s.1983", Aubuchon v. State of Missouri, 631 F.2d 581,582 (8th Cir.Mo.1980) (Note that this court, and the Supreme Court, have ruled that 1983 applies to more than just individuals). Again, all the cases cited in support which give their reasoning ultimately rely on Monroe v. Pape. Milton v. Nelson, 527 F.2d 1158 (9th Cir. Cal.1976), Neal v. Georgia, 469 F.2d 446,448 (5th Cir.Ga.1972), Meyer, Collins v. Florida, 432 F.2d 60,61,n.5 (5th Cir.Fla.1970) and Stewart v. Minnick, 409 F.2d 826 (9th Cir.Cal.1969). Milton

relies on Stewart, which relies on Williford. Neal gives no authorities, but observes "appellant conceded that the State of Georgia is not a proper party under the Eleventh Amendment". Collins gives no reason.

CONCLUSION

The only cases which have explicitly decided that a particular state court is not a "person" under 42 U.S.C. 1983 are Coopersmith, O'Connor, Harris, Quadra, Zuckerman, Louis, Lancaster and Moity. These cases rely on each other, and the decisions which are associated with them and which are used to support them ultimately rely on the authority of the finding in Monroe v. Pape that cities are not to be considered persons liable under s.1983. That finding has been overruled by the Supreme Court in Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). A few cited cases rely indirectly on assertions of judicial immunity or of a state's Eleventh Amendment immunity, but the ultimate authority regarding state courts relies

on the overruled part of Monroe.

Justice Powell's concurrance in Monell gives an explanation of why so many of these decisions relied on Monroe:

> Few cases in the history of the Court have been cited more frequently than Monroe v. Pape . . . Focussing new light on 42 USC 1983, that decision widened access to the federal courts and permitted expansive interpretations of the reach of the 1871 measure. Monell, supra, 704-705.

Before Monroe, state courts were never found to be not liable under 42 U.S.C. 1983. Now, since Monroe has been overruled, there is no longer any basis for a federal court finding that state courts are not "persons" liable under the Civil Rights Laws.